

In the matter of

Communications Assistance for Law  
Enforcement Act (CALEA) and  
Broadband Access and Services

ET Docket No. 04-295

RM-10865

FCC 05-153

**COMMENTS OF WASHINGTON STATE COMMUNITY COLLEGE ON FURTHER NOTICE OF  
PROPOSED RULEMAKING**

## I. Summary

Washington State Community College, hereinafter called the College, submits the following comments in response to the Notice of Proposed Rulemaking dated October 13, 2005 (NPRM). The purpose of these comments is to support an exemption process or limited compliance category for educational entities that, like the College, have a perfect record of support for law enforcement agencies and commitment to provide law enforcement with legally requested assistance.

## II. Discussion

The College supports the goals of the Commission to re-evaluate services provided by telecommunications carriers to ensure court-ordered electronic surveillance. However, there is no need to bring educational institutions like the College, or the private networks that interconnect them, within the realm of CALEA's regulatory framework because (1) the College already meets the needs of law enforcement and (2) the costs of CALEA compliance would critically undermine the teaching and public service missions of the College. If the Commission maintains that higher education institutions should become subject to CALEA, a limited plan to assist law enforcement should include a phased approach to compliance.

**A. Congress did not intend for the Communications Assistance for Law Enforcement Act (CALEA) to apply to colleges as private Internet service providers.**

When CALEA (47 U.S.C. Sections 101-1010) was enacted in 1994, Congress specifically excluded information service providers, such as Internet Service Providers, for the purpose of compliance with CALEA. NPRM now suggest that CALEA applies for Internet services such as

those provided by the College. The College believes that the original intent of CALEA has been improperly broadened.

According to the CALEA Legislative History, House Report No. 103-827 at 20, Congress did not intend for CALEA to involve providers of broadband Internet services such as those provided by the College. The definition of “telecommunications carrier” does not include “persons or entities insofar as they are engaged in providing information services,” such as electronic mail providers, or on-line service providers. Moreover, the College – a public, not-for-profit educational institution that does not make its network facilities generally available to the public – is not a “common carrier for hire” under CALEA section 102(8). Any interpretation of CALEA now suggesting that CALEA specifically applies to educational entities such as the College exceeds CALEA’s scope as originally stated by Congress.

Therefore, the College respectfully requests that the Commission review the compliance framework outlined in the original CALEA statute and consider an exception for higher educational institutions as part of the outcome of the current NPRM.

**B. The College already assists – and will continue to assist – law enforcement in a reasonable and diligent manner.**

The College has an exceptional record of law enforcement support and cooperation. The College currently has more than 2000 students and 250 faculty and staff located in rural Ohio. The College provides off Campus training for the Treasury Department at the Bureau of Public Debt in Parkersburg, WV, as well as many other public and private concerns. The College is aware of security needs and the importance of information to law enforcement agencies who, in the past, have rarely requested our assistance.

The College has never had a request seeking assistance with respect to electronic surveillance via a state or federal subpoenas during the 30+ years that the College has been chartered.

If such requests for assistance are legally issued, the College will respond diligently and with dispatch, using existing infrastructure and technology. The College’s Technology Team and the Executive Committee provide ongoing management and oversight of the College’s voice and data networks and ensure network security and electronic communications integrity. The College is already in a position to assist legal law enforcement requests.



Therefore, there is no need to extend CALEA to Higher educational institutions that rarely receive surveillance assistance requests. The College, which has never received a request from law enforcement for electronic surveillance assistance, is prepared with existing infrastructure to quickly and reasonably assist law enforcement when such legal request is made.

**C. The marginal value of CALEA's application to higher education is further diluted by the absence of technological guidance and is not justified in any event by CALEA's potential costs.**

The Commission has mandated "full compliance" by all newly-covered CALEA entities no later than May 2007. This is an impossible mandate and highlights the need for an exception procedure for higher education. There is currently little guidance with respect to the extent of any necessary system wide CALEA upgrades or even the availability of CALEA-approved upgrade technologies.

The proposed rulemaking does not provide implementation specification that the affected institutions could undertake to comply. In particular,

- there is no guidance with respect to where CALEA-compliant devices must be deployed within the College's networks,
- no guidance regarding specific hardware or software technologies that must be used;
- and no guidance with respect to how the College must balance access with privacy assurances for those not under investigation.

Estimating the cost of "full compliance" is difficult. The complexity of technologies inherent to broadband access and the unknown extent of broadband access that law enforcement may require make estimating the cost of system wide upgrades impossible. The cost to comply with the final order will be excessive and burdensome. For example, replacing existing switching and router systems within the College's network would likely exceed \$100,000. Despite the provision for federal funding in the original CALEA legislation, there is no indication concerning the availability of federal compensation for costs incurred as a result of any retrofit. Also, there is no certainty that any determination of what is "reasonably achievable" would be used to determine the total costs and benefits of applying CALEA to the College's network.

The Commission, with CALEA's uncertainties and potential high costs to the College specifically and higher education generally – especially relative to its limited benefits to law enforcement, should embrace an exemption or limited compliance mandate. Like other public

higher education intuitions across the nation, the College currently faces declining state support. Over the last several years, reductions in state support have resulted in base budget reductions across the institution – including College instruction, public service, academic and administrative support, and student services. While the College has struggled to meet growing demand for IT services and to comply with increasingly stringent governmental regulation, the information technology budgets have been reduced. Higher education must be granted a process through which to undertake CALEA compliance on at least a modified scale. The cost of compliance would further inhibit the College’s ability to fulfill its mission of teaching, public service and to continue as a critical economic force in the Mid-Ohio Valley and the State of Ohio.

**D. Should CALEA be applied to higher education, the College supports a limited compliance category that incorporates limited implementation requirements, reasonable assistance capability requirements and a modified upgrade schedule.**

The College would prefer an exemption for higher education. However, the College could support a limited compliance category that considers the costs and benefits of CALEA’s extension to higher education. This category should include three components that recognize the major distinctions between higher education and commercial broadband service providers.

First, the Commission should reaffirm that CALEA is to be applied only to the public Internet gateway facilities to which the education institutions attach, and not to the internal portions of any private higher education network.

Second, higher education institutions should be asked to meet reasonable assistance capability requirements. Some of these requirements include:

- appointment of an on campus senior employee to ensure all necessary assistance is provided in accordance with local, state and federal laws;
- defining policies and/or procedures to assist in executing lawfully-authorized requests for surveillance;
- publishing contact information for campus officials who will be responsible and responsive to law enforcement agencies;
- maintaining secure and accurate records of law enforcement requests for electronic surveillance;
- reporting compliance with law enforcement agencies on a reasonable basis.

Third, assuming the existence of CALEA-compliant equipment and to the extent any educational institution is required to obtain CALEA-compliant equipment, the College asks that such an

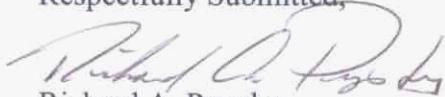
upgrade or modification be installed in the normal course of any regularly-scheduled institutional upgrade program, and not within the current “full compliance” mandate. Such a phase-in will permit the College – a non-profit, public entity – to address technological upgrades in a careful and systematic way consistent with the College’s budget limitations and equipment replacement schedules. Congress, according to CALEA legislative History, House Report No. 103-827 at 16, originally required the federal government “to pay all reasonable costs incurred by industry...to retrofit existing facilities to bring them into compliance with interception requirements”. A federally funded upgrade program would not be inconsistent with Congress’s vision under the original CALEA legislation.

III. **Conclusion**

The College plans to remain a responsive and capable partner to law enforcement needs at all governmental levels. The College encourages the Commission to remain committed to providing a reasonable avenue for the College to demonstrate its commitment through an appropriate exemption or limited exemption procedure.

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Respectfully Submitted,



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